

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

July 25, 2016

Elisabeth A. Shumaker  
Clerk of Court

In re: MARCOS MAZZINI,

Movant.

No. 16-2156  
(D.C. No. 1:01-CR-00291-LH-1)  
(D. N.M.)

ORDER

Before **KELLY, HARTZ**, and **GORSUCH**, Circuit Judges.

Movant Marcos Mazzini, a federal prisoner proceeding pro se, seeks an order authorizing him to file a second or successive 28 U.S.C. § 2255 motion in the district court so he may assert a claim for relief based on *Johnson v. United States*, 135 S. Ct. 2551 (2015). *See* 28 U.S.C. §§ 2255(h), 2244(b)(3). The government filed a response.

The motion for authorization filed in this court on June 23, 2016, is denied as unnecessary because it appears Movant has not previously filed a § 2255 motion. Pursuant to 28 U.S.C. § 1631, we direct the Clerk to transfer the proposed § 2255 motion Movant submitted with his motion for authorization to the district court for the District of New Mexico for filing as an initial § 2255 motion.<sup>1</sup> The filing date for the § 2255 motion is the earlier of 1) the date the motion for authorization was received in this court, or

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<sup>1</sup> In filing this document as a first § 2255 motion, the district court should provide Movant with any notice, warning, and opportunity for supplementation that may be required. *See United States v. Kelly*, 235 F.3d 1238, 1240, 1242 (10th Cir. 2000); *cf. Castro v. United States*, 540 U.S. 375, 377 (2003).

2) the date the motion for authorization was delivered to prison authorities for mailing, if the district court determines Movant is entitled to the benefit of the prison mailbox rule, *see Price v. Philpot*, 420 F.3d 1158, 1165-66 (10th Cir. 2005); Fed. R. App. P. 25(a)(2)(C).

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a long horizontal flourish.

ELISABETH A. SHUMAKER, Clerk